

REMARKS

Claims 1-3, 5, 8, 26-30, 32-38, and 41-52 are currently pending. Claims 1, 26, 30, 37-38, and 41-52 have been amended. These amendments and new claims find support in previously submitted claims 1-3, 24, and 26, paragraphs 1, 11, and 38 of the specification as filed, and figures 1-4.

The Examiner has rejected claims 1-3, 5, 8, 26-27, 30, 32-38, and 41-52 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Publication No. 2003/0065333 to DeMayo. The Examiner argues that Demayo discloses a bone or cartilage implant delivery device having all of the elements of claims 1, 26, 30, 37-38, and 41-52.

Applicants respectfully disagree. Specifically, claims 1, 26, 37, 38, 50, 51, and 52 have been amended to specify that the friction member extends outwardly from the outer surface of the inner shaft, thereby providing the inner shaft with a diameter, in the area of the friction member, such that the friction member engages an inner surface of the outer shaft to provide friction-retarded movement of the inner shaft through the outer shaft. The carrier cylinder 12 of Demayo's tool, which the Examiner equates to the inner shaft of Applicants' device, does not include a friction member that extends outwardly from the outer surface of the carrier cylinder and that provides the carrier cylinder with a diameter, in the area of the friction member, such that the friction member engages an inner surface of the outer cylinder 11 and provides friction-retarded movement of the carrier cylinder 12, through the outer cylinder 11.

Additionally, claims 30, 41-49, and 52 all specify features and qualities of the implant that differentiate it from the bone graft material of DeMayo. Claims 30, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 52 all specify that the outer surface of the implant is in engagement with the inner surface of the outer shaft. DeMayo does not disclose an implant delivery device where an implant is in engagement with the inner surface of the outer shaft. Therefore, claims 1, 26, 30, 37-38, and 41-52 are in condition for allowance and since claims 2-3, 5, 8, 27, and 32-36 depend either directly or indirectly from amended claims 1, 26, and 30, these claims are also in condition for allowance. It is respectfully requested that claims 1-3, 5, 8, 26-27, 30, 32-38, and 41-50 be allowed.

The Examiner has rejected claim 28 under 35 U.S.C. 103(a) as being unpatentable over DeMayo in view of US Patent No. 6,302,887 issued to Spranza et al. The Spranza reference fails to cure the previously described deficiency of the DeMayo reference with respect to claim 26.

Therefore, the combination of the DeMayo and Spranza references fails to teach all of the limitations of claim 26, from which claim 28 depends. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 28.

The Examiner has rejected claim 29 under 35 U.S.C. 103(a) as being unpatentable over DeMayo in view of US Publication No. 2003/0065333 to Smith et al. The Smith reference fails to cure the previously described deficiency of the DeMayo reference with respect to claim 26. Therefore, the combination of the DeMayo and Smith references fails to teach all of the limitations of claim 26, from which claim 29 depends. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 29.

Applicants do not acquiesce to the characterizations of the art. For brevity and to advance prosecution, however, Applicants may have not addressed all characterizations of the art, but reserve the right to do so in further prosecution of this or a subsequent application.

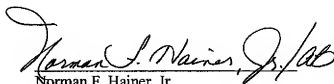
The absence of an explicit response by the Applicants to any of the Examiner's positions does not constitute a concession of the Examiner's positions. The fact that Applicants comments have focused on particular arguments does not constitute a concession that there are not other good arguments for patentability of the claims. All of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

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Respectfully submitted,

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4/27/2010



Norman F. Hainer, Jr.
Reg. No. 55,239

Smith & Nephew, Inc.
150 Minuteman Road
Andover, MA 01810
Telephone: 978-749-1311
Facsimile: 978-684-6417